IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 19804 of 2004

Between:

D. Somaiah S/o Mr. Lingaiah
Rabana Mandal, Addilabad District

..... PETITIONER

AND

1.The Government of Andhra PRadesh rep by Principal Secrtary Panchayat Raj Department, Secretariat, Saifabad Hyderabad.
2.The Sub-Collector, Asifabad Mandal, Office at Saifabad Adilabad District.
3. Mr. B. Nagaiah S/o MR. Keshav
R/o Gangapur Village, Rabana Mandal, Adilabad District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ more appropriately a Writ of Mandamus declaring that Rules 1 to 8 of the Panchayat Raj Rules Prescribed by the G.O. Ms. No. 200, dated: 28-04-1998, are unconstitutional, illegal, void and ultra vires, consequently declare that the notice No. G/1533/2004, dated 08-10-2004, issued by the 2nd Respondent is illegal and Void in the interest of justice and equity.

Counsel for the Petitioner: Mr.A.M.QURESHI

Counsel for Respondents 1 & 2 : G.P. for Panchayat Raj.

Counsel for Respondent No.3: Mr.Y.Ashok Raj.

The Court made the following :

ORAL ORDER:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

Challenge has been made by the petitioner to Rule 8 of the Rules relating to Motion of No-Confidence in Upa-Sarpanch of Gram Panchayat or Vice-President/President of Mandal Parishad or Vice-Chairman/Chairman of Zilla Parishad, hereinafter referred to as “the Motion of No Confidence Rules”. It is represented by the learned counsel for the petitioner that the said Rule is arbitrary and there is no transparency, as, there is lot of discretion vested in the Presiding Officer. He submits that as compared to the Rules for Conduct of Election of Member (Co-opted) and President/Vice-President of Mandal/Parishad and Member (Co-opted) and Chairman and Vice-Chairman of Zilla Parishad, hereinafter referred to as “the Conduct of Election Rules, arbitrariness is writ large inasmuch as Rules 6 and 7 of the Conduct of Election Rules envisage preparation of record of the proceedings of the meeting and signatures of the members participated, whereas, in Rule 8 of the Motion of No Confidence Rules, there is no such safeguard provided.

The aforementioned submission made by the learned counsel for the petitioner has no force inasmuch as there are separate rules governing Conduct of Election and Motion of No Confidence. Rule 8 read with Rule 10 of the Motion of No Confidence Rules on the face of it suggests that Presiding Officer is required to prepare minutes of the meeting and after consideration of the motion in the meeting wherein voting is only by show of hands, he is required to prepare minutes of the meeting and is bound to submit a copy of the motion and the result of the voting thereon to the Commissioner in the case of a Upa-Sarpanch of a Gram Panchayat or to the Government in the case of President or Vice-President of Mandal Parishad. It cannot be said that there is no transparency when Presiding Officers are required to submit copy of the motion and the result of the voting on record. Obviously result of the voting would be the record maintained by the Presiding Officer wherein he is supposed to write as to how many members voted in favour of the motion and how many members voted against the motion.

On merits, learned counsel for the petitioner submitted that as per his instructions

notice of Motion of No Confidence was served upon the 2nd respondent on 23-9-2004, and the second respondent issued a notice dated: 8.10.2004 fixing 3.11.2004 as the date of meeting to consider the Motion of No Confidence. He states that it is beyond the stipulated period of 30 days. The said submission made by the learned counsel for the petitioner is only on the basis of the instructions issued by the petitioner, whereas the affidavit filed does not state the source of information. Notice was served on Respondent No.2. Therefore, only respondent No.2 can state as to when the notice was received by him. Learned counsel for the respondent No.2 has shown to us a photocopy of the notice on which endorsement was made that it was received on 4.10.2004. As per the provisions of Section 5 of the Andhra Pradesh (Telangana Area) General Clauses Act, 1308 Fasli, when period has to be counted, the day from which period has to be counted is required to be excluded. Therefore, if 4.10.2004 is excluded, the meeting was convened within stipulated period of 30 days as contemplated under Rule 3 of the Motion of No Confidence Rules. Therefore, we find no merit in the Writ Petition, which is accordingly dismissed. No costs.

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DEVINDER GUPTA, C.J.

02.11.2004.

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C.V.RAMULU, J.

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To

1.The Principal Secretary to Government of Andhra Pradesh, Panchayat Raj

Department, Secretariat, Saifabad Hyderabad.
2.The Sub-Collector, Asifabad Mandal, Office at Saifabad Adilabad District.
3. Two CCs to Government Pleader for Panchayat Raj, High Court Buildings, Hyderabad (OUT).

4. Two CD copies.